

Cabinet	<b>CAB/30/07</b>
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## ESSEX COUNTY COUNCIL TREE PRESERVATION ORDERS

Report by Cabinet Member for Environment, Planning and Assets

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### Purpose of Report and Recommendations

To seek approval for proposals to improve the legal protection of trees in Essex by transferring responsibility for Tree Preservation Orders made originally by the County Council to a more local level.

Essex County Council (ECC) made its first Tree Preservation Order (TPO) in 1949 making early use of powers under the new 'Planning' Act. Orders are now normally made at district level and Government guidance is that they should be reviewed. It is therefore proposed that all orders should be resurveyed in partnership with district/borough councils. The County will then revoke the original orders, which will be superseded by new orders, made at district level. This should improve the quality of the service and simplify the service provided to residents of Essex, improve the protection of important trees and allow decisions to be made at a more local level.

### Recommendation

1. That the Council seek to work in agreement with district and borough councils to ensure important trees within Essex, currently protected by an ECC TPO, continue to receive protection once the ECC TPO has been revoked.
2. That a target date of 31<sup>st</sup> March 2010 is set to complete the resurvey and revocation of all ECC TPOs.

## 1.0 Relevance to Corporate Objectives and other Strategic Plans

- 1.1 The recommended course of action supports all four of the corporate strategic objectives identified in the refreshed Corporate Plan as well as the overarching priority of putting our customers first.

## 2.0 Legal Implications

- 2.1 Section 333(7) of the Town and Country Planning Act 1990 (clarified in the Town and Country Planning (Trees) Regulations 1999) gives the County Council the power to modify or revoke its TPOs.
- 2.2 It is important to note that since 1974, ECC has been unable to make new TPOs. It can vary TPOs by removing trees but it cannot, other than under very special circumstances, add new trees to an order. As it modifies or revokes its orders it is therefore good practice (and follows Government guidance) to work closely with District and Borough Council partners to ensure trees, worthy of protection particularly those under most threat, continue to be protected.
- 2.3 To revoke an order the Council **MUST**:
- make a formal order revoking a TPO (a 'revocation order')
  - date stamp the original TPO stating it has been revoked
  - send a copy of the order to those affected (Government advice is not only the owner/occupier, but also **all** owner/occupiers of adjoining land)
  - withdraw the TPO but retain it at County hall for public inspection.
- 2.4 The revocation order takes immediate effect. Government guidance states that
- “before revoking a TPO the LPA (Local Planning Authority) are not required to publicise their intention to do so or consult local people/interest groups. It does however suggest that the LPA may decide that some form of publicity should take place”.*
- 2.5 The same procedure applies when varying an order (with no new trees added). In addition the LPA must also issue a notice to all concerned, giving its reasons for doing so, explaining the effect of the variation and allowing people an opportunity to comment and a date by which they should do so.
- 2.6 A varied order then has to be made available for inspection.

## 3.0 Finance and Resources Implications

- 3.1 It is estimated that at least one member of staff is currently employed administering ECC TPOs, so revoking orders will result in a saving to the Council. Some additional staff time may be required to assist the districts during the review/revocation process but this can be found from within existing

resources. Some additional legal and administrative services may be required but this should be within existing service level agreements.

#### **4.0 Human Resources Implications**

4.1 The revocation process will not require any additional staff and in the longer term will free up staff for other tree related duties.

#### **5.0 Information Services Implications**

5.1 This should have no implications on information services.

#### **6.0 Congestion Impact**

6.1 This will have no impact on congestion.

#### **7.0 Background**

7.1 Tree Preservation Orders are important tools for maintaining the appearance and landscape character of both our urban and rural environment. Essex was proactive in using orders following their introduction in the 1949 Planning Act. Since 1974 all new orders are served by District/Borough councils. As a legacy from before that time Essex has 358 orders, made and confirmed between 1949 and 1979.

7.2 Essex is one of only three County Councils (along with Leicestershire and Derbyshire) still administering its own TPOs. Other than in very exceptional circumstances the County Council is unable to make new TPOs.

7.3 Current Government guidance recommends that LPAs keep their TPOs under review.

*“By making full use of their variation and revocation powers LPAs can ensure their TPOs are brought up to date when the time is right to do so.” (Tree Preservation Orders: A Guide to the Law and Good Practice, DETR 2000: para.4.2)*

7.5 Earlier Government advice examined in particular the need to review ‘Area Orders’:

*“LPAs are encouraged to resurvey their existing TPOs which include the area classification with a view to replacing them with individual or group classifications where appropriate”. (DOE Practice Guide 1994)*

7.6 Many of ECC’s TPOs cover large geographical areas and contain different order classifications, combining for example, Woodlands, Areas and Groups as well as individual trees. For example, a single TPO made in 1949 (2/49) is made up of 174 separate woodlands. TPO 5/53 includes 69 groups of trees and 24 individual trees. Order 10/70 contains 26 separate areas.

7.7 The youngest ECC TPO is now 28 years old and the earliest 58 years old but very few have been reviewed.

7.8 Since the orders were served a number of factors have changed resulting in them becoming increasingly unworkable and unenforceable, for example:

- changes to primary legislation and guidance
- changes in land use
- removal of trees present at the time the TPO was made (with or without ECC consent)
- trees still present that may no longer merit TPO protection
- new trees have grown which now merit protection (particularly for 'Area' orders)
- the formal TPO map sometimes bears little comparison with a modern digital map

7.9 The above factors have been recognised for some time and in July 2005 an assessment was initiated. This involved a detailed desk top study the aim of which was to provide a framework for categorising the orders and prioritising those in the most urgent need for review.

## 8.0 Area of County Affected

8.1 These recommendations affect the whole of Essex.

## 9.0 Options/Proposals

9.1 In the light of the County Council being one of only three County Councils still administering its own TPOs, Government guidance to Planning Authorities to keep their orders (particularly 'Areas') under review and the recent review of all the County Council's services, there is a strong case for appraising various options for managing ECC TPOs, with an emphasis on reducing resources required to administer them in the short to medium term.

9.2 Four basic approaches have been considered. These are shown in the Table below.

<b>Option 1</b>	<b>The current situation:</b> Continue to administer ECC orders and modify or revoke 15 Orders a year.
<b>Option 2</b>	<b>'Walk away':</b> Stop administering TPOs immediately and don't revoke.
<b>Option 3</b>	<b>Resurvey and revoke all</b> TPOs, in partnership with District and Borough partners, over 3 years.
<b>Option 4</b>	<b>Revoke all</b> TPOs as quickly as possible without consultation with District/Borough councils

9.3 Each option's advantages, disadvantages and possible consequences were examined.

- 9.4 The recommended course of action is Option 3, resurvey and revoke. The aim is to resurvey TPOs on a phased basis, ECC officers working with District officers in that process. Districts will then serve new and more appropriate orders based on that resurvey. Once those are confirmed Essex will revoke its original orders. Any orders revealed by this process to be irrelevant will be revoked immediately.
- 9.5 Discussions with most Districts have taken place and this approach is acceptable to them as it will allow time for important trees within their locality, currently protected by an ECC TPO to be identified and a new order put in place. The advantage of this approach is that this will phase the revocation of the TPOs over a 3 year period. It would also result in a single tier TPO system in Essex (from 2010) that will be less confusing and more customer focussed. Working with District and Borough councils in this way is in line with Government guidance and best practice and in keeping with moves towards 'localism'.
- 9.6 The disadvantage of the resurvey and revoke approach is that the resurvey may require some input from ECC staff unless the district and borough councils can be persuaded to take on the resurvey themselves. There may also be some short term increases legal and administrative costs. The aim will be to keep such costs to a minimum.
- 9.7 Option 4, the revoke only approach, whilst being the most cost efficient way of dealing with ECC TPOs would not comply with Government advice and best practice. It would be inconsistent with the objectives of the Corporate Plan.
- 9.8 Option 2 would produce an instant saving, but would have the same disadvantages as option 4 with the additional disadvantage that the existing 2 tier system would still nominally exist with all the associated confusion to service users and without the long term benefit of having devolved responsibility for the TPOs.
- 9.9 Option 1 would produce no savings and would continue to maintain the current, unclear, two tier system. The reviewing of 15 TPOs a year would just comply with Government guidance but would take about 24 years to complete, by which time the first orders resurveyed would need another resurvey. This option would require more staff resources than are currently applied to the administration of ECC TPOs.
- 9.10 The main driver for the revoking of the TPOs is to improve the quality of service provided to the residents of Essex by the removal of the unclear two tier system. Secondary drivers are efficient use of the Council's resources and the maintenance of the County Council's reputation of caring for the environment of Essex. The only option that meets these drivers is Option 3.

## **10.0 Consultation with other relevant Portfolio Holder(s)**

- 10.1 No other portfolio holder directly involved.

## **11.0 Consultation with Local Member**

11.1 The proposals affect the whole of Essex. It is proposed that local members will be kept informed of revocations of ECC TPOs within their ward.

## **12.0 Background papers**

12.1 None